

1-1 By: Schaefer, et al. (Senate Sponsor - Schwertner) H.B. No. 2837  
 1-2 (In the Senate - Received from the House May 4, 2023;  
 1-3 May 5, 2023, read first time and referred to Committee on State  
 1-4 Affairs; May 16, 2023, reported favorably by the following vote:  
 1-5 Yeas 8, Nays 3; May 16, 2023, sent to printer.)

1-6 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-7				
1-8	X			
1-9	X			
1-10	X			
1-11	X			
1-12		X		
1-13		X		
1-14	X			
1-15	X			
1-16	X			
1-17	X			
1-18		X		

1-19 A BILL TO BE ENTITLED  
 1-20 AN ACT

1-21 relating to prohibiting a person or entity from surveilling,  
 1-22 reporting, or tracking the purchase of firearms, ammunition, and  
 1-23 accessories through the use of certain merchant category codes;  
 1-24 imposing a civil penalty.

1-25 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-26 SECTION 1. This Act may be cited as the Second Amendment  
 1-27 Financial Privacy Act.

1-28 SECTION 2. The legislature finds that:

1-29 (1) The Second Amendment to the United States  
 1-30 Constitution guarantees the people the right to keep and bear arms;

1-31 (2) Section 23, Article I, of the Texas Constitution  
 1-32 provides that "Every citizen shall have the right to keep and bear  
 1-33 arms in the lawful defence of himself or the State";

1-34 (3) In September 2022, the International Organization  
 1-35 for Standardization (ISO), based in Switzerland, approved a new  
 1-36 merchant category code for firearm and ammunition merchants;

1-37 (4) In a letter to payment card networks, federal  
 1-38 lawmakers stated that the new merchant category code for firearms  
 1-39 retailers would be ". . . the first step towards facilitating the  
 1-40 collection of valuable financial data that could help law  
 1-41 enforcement in countering the financing of terrorism efforts,"  
 1-42 expressing a clear government expectation that payment card  
 1-43 networks will utilize the new merchant category code to conduct  
 1-44 mass surveillance of constitutionally protected firearms and  
 1-45 ammunition purchases in cooperation with law enforcement;

1-46 (5) The new merchant category code will allow banks,  
 1-47 payment card networks, acquirers, and other entities involved in  
 1-48 payment card processing to identify and separately track lawful  
 1-49 payment card purchases at firearms retailers in this state, paving  
 1-50 the way for unprecedented surveillance of Second Amendment activity  
 1-51 and information sharing between financial institutions and the  
 1-52 government;

1-53 (6) This potential for cooperative surveillance and  
 1-54 tracking of lawful firearms and ammunition purchases will have a  
 1-55 significant chilling effect on citizens wishing to exercise their  
 1-56 federal and state constitutional rights to keep and bear arms in  
 1-57 this state;

1-58 (7) While federal law requires some financial  
 1-59 institutions to report transactions that are highly indicative of  
 1-60 money laundering or other unlawful activities, there is no federal  
 1-61 or state law authorizing financial institutions to surveil and

2-1 track lawful activities by customers in cooperation with law  
 2-2 enforcement;

2-3 (8) The creation or maintenance of records of  
 2-4 purchases of firearms or ammunition or the tracking of sales made by  
 2-5 a retailer of firearms or ammunition by a nongovernmental entity,  
 2-6 including a financial institution, without a substantial and  
 2-7 historical business need or a requirement imposed by law, may  
 2-8 frustrate the right to keep and bear arms and violate the reasonable  
 2-9 privacy rights of lawful purchasers of firearms or ammunition; and

2-10 (9) Based on the above stated findings, it is the  
 2-11 intent of the legislature to prohibit the misuse of payment card  
 2-12 processing systems to surveil, report, or otherwise discourage  
 2-13 constitutionally protected firearm and ammunition purchases within  
 2-14 this state.

2-15 SECTION 3. Title 12, Business & Commerce Code, is amended by  
 2-16 adding Chapter 610 to read as follows:

2-17 CHAPTER 610. UNAUTHORIZED TRANSACTION CATEGORIZATION

2-18 Sec. 610.001. DEFINITIONS. In this chapter:

2-19 (1) "Electronic payment transaction" means a  
 2-20 transaction in which a person uses a payment card or other payment  
 2-21 code or device issued or approved through a payment card network to  
 2-22 debit a deposit account or use a line of credit, whether  
 2-23 authorization is based on a signature, personal identification  
 2-24 number, or other means.

2-25 (2) "Firearms code" means any merchant category code  
 2-26 approved by the International Organization for Standardization for  
 2-27 a firearms retailer, including Merchant Category Code 5723.

2-28 (3) "Firearms retailer" means any person or entity  
 2-29 engaged in the sale of firearms, ammunition for use in firearms, or  
 2-30 firearms accessories.

2-31 (4) "Payment card" means a credit card, debit card,  
 2-32 check card, or other card that is issued to an authorized user to  
 2-33 purchase or obtain goods, services, money, or any other thing of  
 2-34 value.

2-35 (5) "Payment card issuer" means a lender, including a  
 2-36 financial institution, or a merchant that receives applications and  
 2-37 issues payment cards to individuals.

2-38 (6) "Payment card network" means an entity that  
 2-39 directly or through a licensed member, processor, or agent provides  
 2-40 the proprietary services, infrastructure, and software that route  
 2-41 information and data to conduct debit card or credit card  
 2-42 transaction authorization, clearance, and settlement, and that an  
 2-43 entity uses in order to accept as a form of payment a brand of debit  
 2-44 card, credit card, or other device that may be used to carry out  
 2-45 debit or credit transactions.

2-46 Sec. 610.002. UNAUTHORIZED CATEGORIZATION OF CERTAIN  
 2-47 TRANSACTIONS. (a) A person or entity involved in facilitating or  
 2-48 processing an electronic payment transaction, including a payment  
 2-49 card issuer or payment card network, may not assign to a merchant or  
 2-50 require a merchant to use a firearms code.

2-51 (b) For the purposes of the sale of firearms, ammunition for  
 2-52 use in firearms, and firearms accessories, a firearms retailer may  
 2-53 not provide a firearms code to a payment card issuer or payment card  
 2-54 network and may only use or be assigned a merchant category code for  
 2-55 general merchandise retailers or sporting goods retailers. Any  
 2-56 agreement or contractual provision to the contrary is void.

2-57 (c) A payment card issuer or payment card network shall  
 2-58 notify the payment card holder in writing on every occasion that a  
 2-59 firearms code is assigned to an electronic payment transaction on  
 2-60 the payment card holder's account.

2-61 Sec. 610.003. INVESTIGATIVE AUTHORITY OF ATTORNEY GENERAL.

2-62 (a) If the attorney general has reasonable cause to believe that a  
 2-63 person or entity has engaged in, is engaging in, or is about to  
 2-64 engage in a violation of this chapter, the attorney general shall  
 2-65 issue a civil investigative demand. The procedures established for  
 2-66 the issuance of a civil investigative demand under Section 15.10  
 2-67 apply to the same extent and manner to the issuance of a civil  
 2-68 investigative demand under this section.

2-69 (b) The attorney general may request, pursuant to a civil

3-1 investigative demand issued under Subsection (a), that a person or  
 3-2 entity disclose any data that is relevant to an investigation  
 3-3 conducted by the attorney general. The attorney general shall  
 3-4 evaluate the data for compliance with the requirements set forth in  
 3-5 Section 610.002.

3-6 Sec. 610.004. NOTICE OF VIOLATION OF CHAPTER; OPPORTUNITY  
 3-7 TO CURE. (a) Not later than the 30th day before bringing an action  
 3-8 under Section 610.005, the attorney general must give written  
 3-9 notice to the person or entity identifying the specific provisions  
 3-10 of this chapter that are or were being violated.

3-11 (b) The attorney general may not bring an action against the  
 3-12 person or entity if the person or entity:

3-13 (1) cures the identified violation within the 30-day  
 3-14 period; and

3-15 (2) provides the attorney general a written statement  
 3-16 affirming that the person or entity has:

3-17 (A) cured the alleged violation;

3-18 (B) provided supporting documentation to show  
 3-19 how the violation was cured; and

3-20 (C) made changes to internal policies to prevent  
 3-21 the recurrence of any similar violation in the future.

3-22 Sec. 610.005. ENFORCEMENT; CIVIL PENALTY; INJUNCTION. (a)  
 3-23 Except as provided by Section 610.006, the attorney general has  
 3-24 exclusive authority to enforce this chapter.

3-25 (b) A person or entity who violates this chapter and fails  
 3-26 to cure the violation in accordance with Section 610.004, or who  
 3-27 breaches a written statement provided to the attorney general under  
 3-28 that section, is liable for a civil penalty in the amount of \$10,000  
 3-29 for each violation.

3-30 (c) The attorney general shall bring an action to:

3-31 (1) recover a civil penalty under this section; and

3-32 (2) restrain or enjoin a person or entity from  
 3-33 violating this chapter.

3-34 (d) The attorney general may recover reasonable attorney's  
 3-35 fees and other reasonable expenses incurred in investigating and  
 3-36 bringing an action under this section.

3-37 (e) The attorney general shall deposit a civil penalty  
 3-38 collected under this section in the state treasury to the credit of  
 3-39 the general revenue fund.

3-40 Sec. 610.006. PRIVATE RIGHT OF ACTION. (a) A person who has  
 3-41 used a payment card to purchase a firearm, ammunition for use in a  
 3-42 firearm, or a firearm accessory may bring an action against a  
 3-43 payment card issuer or payment card network to obtain:

3-44 (1) a declaratory judgment under Chapter 37, Civil  
 3-45 Practice and Remedies Code, that the payment card issuer or payment  
 3-46 card network has violated Section 610.002; or

3-47 (2) a judgment enjoining the payment card issuer or  
 3-48 payment card network from violating Section 610.002.

3-49 (b) Except as provided by Subsection (a), this chapter may  
 3-50 not be construed as providing a basis for, or being subject to, a  
 3-51 private right of action for a violation of this chapter or any other  
 3-52 law.

3-53 SECTION 4. The changes in law made by Chapter 610, Business  
 3-54 & Commerce Code, as added by this Act, apply only to a purchase of a  
 3-55 firearm, ammunition for use in a firearm, or a firearm accessory  
 3-56 that takes place on or after the effective date of this Act.

3-57 SECTION 5. If any provision of this Act or its application  
 3-58 to any person or circumstance is held invalid, the invalidity does  
 3-59 not affect other provisions or applications of this Act that can be  
 3-60 given effect without the invalid provision or application, and to  
 3-61 this end the provisions of this Act are declared to be severable.

3-62 SECTION 6. This Act takes effect September 1, 2023.

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